IB (3)

No. 08-710

Supreme Court, U.S.
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In The

Supreme Court of the United States

RICHARD AND SHARON THEUSCH,

Pro- Se Petitioners,

v.

TAD BERG, et al.,

Respondents,

On Petition For Writ Of Certiorari To The State Of Minnesota In The Court Of Appeals

SUPPLEMENTAL BRIEF TO PETITION FOR WRIT OF CERTIORARI TO FURTHER EXEMPLIFY DEPRIVATION OF CONSTITUTIONAL AND CIVIL RIGHTS

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STATEMENT EXEMPLIFYING THE DEPRIVATION OF CONSTITUTIONAL AND CIVIL RIGHTS

In a landmark case regarding land owners alleging it was unconstitutional for a township to take their land to widen an old two rod road into a four rod road without "due process" the Minnesota Supreme Court ruled; "Privately owned land cannot become a public road by adverse use beyond the portion so used merely by a statutory pronouncement to that effect."... "Eminent domain procedures, however, effectively provide private landowners with notice, due process of law, and the opportunity to secure just and fair compensation in return for the property taken." *Barfnecht v. Town Board of Hollywood Township* (232 N.W. 2d 420, (1975). Thus, the Minnesota Supreme Court acknowledged if a township attempts to assert its authority over a portion "greater than that which it has maintained without providing due process for property owners, its actions are unconstitutional.

The unlawful taking of Petitioners' property was also unconstitutional. Petitioners were denied "due process" when the Township failed to give statutory "notice" in recording a 66 foot wide road on Petitioners' property in 1991; and when they failed to give statutory "notice" that they intended to physically assert their unlawful claim in 2003 by cutting down trees solely on Petitioners' property.

MS 160.05 protected old prescriptive easements maintained one year prior to 1957; however, the road on Petitioners' property fails to meet this criteria. On the contrary, the road (trail) on Petitioners' property did *not* exist until *after* 1970. "Town Roads include those roads which were "maintained one year prior to 1957" (MS 160.02.)

Valid road law cited in Petitioners' Writ of Certiorari, eminent domain law, and the Federal Uniform Relocation and Assistance Policies Act of 1970 governs expanding old roads and establishing *new* roads, properly and lawfully and should have been utilized to acquire the "66 foot town road" recorded on Petitioners' property in 1991. Petitioners continually instructed counsel to

challenge the Township's utilization of MS 160.05 to acquire their property for the *new* public road without just compensation. MS 160.05 may also no longer be utilized in establishing "widths" of old prescriptive easements since Minnesota law requires *all* town roads to be lawfully "recorded" (MS 164.07 Sub. 11)..." at 66 feet wide" (MS 160.04.) The Minnesota Supreme Court has ruled: "all road orders, regardless of establishment *must* be recorded with the county recorder." *(Sterling Township v. Edgar Griffin and Another,* 309 MN 320. 244 N.W. 2d 129, (1976).

Since town roads are "Created in the County State Aid to Highway Fund" (MS 162.081), and the Minnesota Constitution authorizes this fund, it is of further importance that town roads be lawfully recorded.

"There is hereby created a county state-aid fund... The legislature may authorize the counties by law to use a part of the funds apportioned to them to aid in the construction, improvement and maintenance of other county highways, *township roads,...* within the respective counties." (Minnesota

Constitution, Article XIV Public Highway System, Section 7)

As well as being properly recorded with the county auditor (MS 164.07 Sub. 11), Minnesota Law also requires that town roads be constructed with "proper plans and specifications" (MS 160.17 Sub. 1) and that town road "construction be opened for bids." (MS 160.17 Sub. 2). Leslie Township was cited for violation of MS 160.17 Subd. 1 and 2, and violation of MS 164.07 Subd. 11, regarding the new "lake road" which forked through Petitioners' property in the public record: *Audit Report of the State of Minnesota Town of Leslie, March l, 1973 by Rolland F. Hatfield, State Auditor.*

In Leslie Township's own recorded and certified Town Road Resolution (Page 15, Court Exhibits 16 and 17), it acknowledges the plats written under "Tract Information," which Leslie Township utilized in preparing its 1991 recorded Town Road Resolution. Leslie Township documented the "Little Osakis Acres Plat" (1981) and the "Little Deer Beach Plat" (1960) both in "Section 26" and "Hughes Lake Addition Plat" (1984) in "Section 25" under T597

(Bambi Trail aka Gateway Drive). The 1960 and 1981 plats clearly illustrate the lake road in Section 26 as 50 feet and 26 feet wide. It was also clearly illustrated that Petitioners' property in Section 25 was not a part of the Hughes Lake Addition Plat, the 1960 plat or the 1981 plat, whatsoever, yet Leslie Township falsely recorded a 66 foot wide town road easement through Petitioners' property anyway. (Page 15, Court Exhibits 16 and 17.)

"Whoever intentionally presents for filing, registering, or recording, or files, registers, or records such instrument when genuine may be sentenced..."(MS 609.64 Recording, Filing of Forged Instrument.)

Petitioners were without recourse to impede the recording of the false instrument against their Legal Abstract. Acquiring private property on a false instrument victimizes the weak who do not have the resources to stand up to the unlawful taking.

A 66 foot (four rod) town road is also depicted through Petitioners' property on the 1983 half section map prepared by the previous Todd County Surveyor (Court Exhibit #2), and although this map

was revised two times (1990 and 1993,) the error remained uncorrected. Petitioners also had no recourse to impede the inaccurate mapping of a 66 foot road on their property on this county half section map.

> "Decency, security, and liberty alike demand that government officials be subjected to the same rules of conduct that are commands to the citizens. In a Government of laws, existence of the government will be imperiled if it fails to observe the law scrupulously. Crime is contagious. If government becomes a lawbreaker, it breeds contempt for the law..." *Olmstead v. U.S.,* 277 US 348, 485 S Ct. 564, 575; 72 Led 944.

The Federal Uniform Relocation and Assistance Policies Act of 1970, adopted by the State of Minnesota, should have prevented government from "strong arming" and "bullying" Petitioners into complying with their wishes without fair value for their land, however; "The Act" was not utilized by Leslie Township.

"In any case where the court determines that a taking is not for a public use or is *unlawful,* the court shall award the owner reasonable attorney fees and other related expenses, fees, and costs in addition to other compensation and fees authorized by this Chapter." (MS 117.031 (b) Attorney Fees).

It is a fundamental right that private property may *not* be taken and given to another party without just compensation:

> "If a new road...were to be made through the grounds of a private person, it might perhaps be extensively beneficial to the public; but the law permits no man, or set of men, to do this without the consent of the owner of the land." Ibid. Only "by giving [the landowner] full indemnification" could the government take property, and even then "[t]he public [was] now the individual, treating with an individual for an exchange." Ibid. "When the public took property, in other words, it took it as an individual buying property from another typically would; for one's own use. The Public Use Clause, in short, embodies the Framers'

understand that property is a natural, fundamental right, prohibiting the government from "tak[ing] property from A. and giv[ing] it to B." *Calder v. Bull,* 386, 388 (1798).

"The Fifth Amendment to the Constitution, made applicable to the States by the Fourteenth Amendment, provides that "private property [shall not] be taken for public use, without just compensation." It is presumed in this clause "that no word was unnecessarily used, or needlessly added." *Wright v. United States,* 302 U.S. 583. 588 (1938). "It cannot be presumed that any clause in the constitution is intended to be without effect." *Myers v. United States,* 272 U.S. 52, 151 (1926). The taking must be for a "public use" and "just compensation" must be paid to the owner." *Brown v. Legal Foundation of Washington,* 538 U.S. 216 231-232 (2003).

In the original draft of the *Declaration of Independence,* before it was ratified July 4, 1776 John Locke wrote: "We hold these truths to be self evident, that all men are created equal, that they are endowed by their Creator with certain unalienable

rights, that among these are Life, Liberty and *Property.*"

Petitioners allege that the extraordinary irregularities in this case involving their private property are conclusive of a combined effort to deprive them of their constitutional and civil rights.

Although it states in the filed August 6, 2006 letter to the District Court Judge, "townships are now required by law to record their roads," counsel failed to cite MS 164.07 Subd. 11.

The opposing counsel's attempt to suppress Respondents' failure to give "notice" in his pre-trial Motion in Limine, was indicative of further denying Petitioners' constitutional right to "due process of law."

"...an...officer who acts in violation of the Constitution ceases to represent the government." *Brookfield C. v Stuart,* 234 F. Supp 94, 99 (U.S.D.C., Wash. D.C.) (1964.)

The Honorable Judge Wayne Farnberg's order *denied* Respondents' above pre-trial Motion in Limine to suppress "notice," yet the Petitioners' own counsel failed to present the order for signing until

four months *after* the court trial; thereby, depriving Petitioners' "due process of law" and "equal protection under the law." "This order shall control the subsequent course of the action and shall be modified only to prevent manifest injustice." (Minnesota Rules of Civil Procedure, Section II Rule 15.05.)

Although Petitioners answered Respondents' interrogatories and requests for documents immediately and fully, Respondents *"denied"* the Petitioners' similar requests providing an unfair advantage to the Respondents at trial. "...the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery." (Minnesota Rules of Civil Procedure Section V Rule 26.04.)

The sworn trial video testimony of the previous Todd County Surveyor of fourteen years addressing the unlawful road on Petitioners property, though delivered to the court at trial, was suppressed during trial, creating further obstruction of justice.

The fact-finding procedure employed by the District Court was not adequate to afford Petitioners

a full and fair hearing. The jury dismissal without explanation, the evidence taken back during the trial, evidence not marked appropriately before trial, Petitioners' exhibits left at the office by their own counsel, and the Respondents delivering evidence at trial which was not provided to Petitioners during discovery, all obstructed justice and further denied "due process of law."

The unjust mediation forced upon the Petitioners after Respondents entered their property unlawfully and damaged it, further oppressed the Petitioners and inflicted financial harm on them. Petitioners were further oppressed by the unjust District Court order to pay Respondents "Costs and Disbursements" which left unchallenged would have inflicted significant financial harm.

Petitioners were further intimidated and oppressed when the Township sent experts and officials to their property without Petitioners' consent and were unnecessarily served *twice* by Respondents' counsel with the lowest estimate of the tree damage.

The 2005 diagram prepared by Respondents' hired surveyor was utilized in the Court Trial to denote a "road" on Petitioners' property; however, the drawing delivered to the court was not a "legal" road survey. Yet, this drawing was given significant credibility in the Courts Findings of Fact. Petitioners' counsel failed to challenge this survey. Petitioners hired their own experts; [1] however, Petitioners were informed by their counsel that other witnesses as well as their surveyor (Northstar), did not want to testify.

Again, Petitioners were denied "due process" and "equal justice under law." Petitioners were also excluded from strategies, decisions and laws utilized throughout their "five- year" litigation process.

The failure to provide Petitioners with statutory "notice" of the unlawfully recorded road and failure to provide "notice" to cut down Petitioners' trees, combined with the extraordinary irregularities of the trial, facts and events of this case, deprived Petitioners of "due process", "just compensation" and

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[1] Page 9 line 4 of Writ of Certiorari – "These" included Forester and Appraiser. Northstar surveying did not testify at trial.

"equal justice under law" contrary to the provisions of the Fifth and Fourteenth Amendments to the U.S. Constitution and contrary to the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

The U.S. Constitution and Federal Law is the "law of the land" and has supremacy over state law, thereby, these further laws of the United States are asserted:

1. "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every Sate shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." Article VI Clause 2 of the Constitution of the United States.
2. "In all cases...in which a state shall be party, the Supreme Court shall have original jurisdiction." Article III, Section 2(2) U.S. Constitution.

3. "all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this Constitution." Article VI, Clause 3.
4. "If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United Sates, or because of his having so exercised the same; or "If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured. They shall be fined..." United States Code, Title 18 Section 241.
5. "Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, shall be fined..."United States Code, Title 18 Section 242.

6. "The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." United Sates Code, Title 28, Section 1331.

7. "The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:"

(l) "To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in Section 1985 of Title 42;"

(2) "To recover damages from any person who fails to prevent or to aid in preventing any wrongs mention in Section 1985 of Title 42 which he had knowledge were about to occur and power to prevent."

(3)"To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United

States..." United States Code, Title 28, Section 1343.

8. "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any States..., subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceedings for redress..."United States Code, Title 42, Section 1983.

9. "...(3) If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws;...in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the

object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising and right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators." U.S. Code, Title 42, Section 1985.

10. "Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as respondents in the

action;..."United States Code, Title 42 Section 1986.

It is a sad day when our government's commitment to Constitutional Rights of individuals is sacrificed and further harm is inflicted on them for public gain.

"Any sacrifice of any right of any individual is morally wrong. It is also potentially dangerous to all rights of all individuals and, therefore, threatens the general welfare of the common good, which depend basically upon observance of due rights of each and every individual." "Depriving an individual of his rights through government coercion, or by other individuals is to victimize potentially every individual because this sets a precedent which is conducive to later disregard the rights of all." (The American Ideal of 1776 by Hamilton Albert Long.)

Therefore, Petitioners pray their request for a Writ of Certiorari in the Supreme Court of the United States be granted.

Respectfully submitted,

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